

IN THE COURT OF APPEALS OF TENNESSEE  
AT KNOXVILLE

Assigned on Briefs February 26, 2004

**JONATHAN INMAN, ET AL. v. WILBUR S. RAYMER, ET AL.**

**Appeal from the Chancery Court for Cumberland County**  
**No. 8899-5-03     Vernon Neal, Chancellor**

**FILED MAY 4, 2004**

**No. E2003-01964-COA-R3-CV**

The real property addressed in the complaint was sold at a tax sale on March 20, 2002. That sale was confirmed by a judgment of the trial court entered April 4, 2002. The sale was prompted by the apparent nonpayment of 1996 property taxes. When the defendants, Wilbur S. Raymer and wife, Lois O. Raymer (“the previous owners”), failed to avail themselves of their right to redeem the property “within one (1) year after entry of [the] order of confirmation of the tax sale” *see* Tenn. Code Ann. § 67-5-2702(a) (2003), the plaintiffs, Jonathan Inman and wife, Keena Inman (“the present owners”) – who had received title to the property as a result of a Clerk & Master's Deed dated April 4, 2003 – filed a complaint against the previous owners to quiet title. The trial court, acting *sua sponte*, dismissed the complaint, but did so without prejudice. The court concluded that Tenn. Code Ann. § 67-5-2504(d) (2003) prevents the present owners from suing to quiet title prior to the expiration of the three-year period set forth in that statute. The present owners appeal. We affirm.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court**  
**Affirmed; Case Remanded**

CHARLES D. SUSANO, JR., J., delivered the opinion of the court, in which HERSCHEL P. FRANKS, P.J. (E.S.), and D. MICHAEL SWINEY, J., joined.

C. Douglas Fields, Crossville, Tennessee, for the appellants, Jonathan Inman and wife, Keena Inman.

No brief filed on behalf of the appellees, Wilbur S. Raymer and wife, Lois O. Raymer.

**OPINION**

I.

The sole issue advanced by the appellants is as follows:

Does the three-year period “to invalidate [a] tax title to land,” *see* Tenn. Code Ann. § 67-5-2504, prevent a grantee of a tax sale deed from filing a complaint to quiet title to the property prior to the expiration of that period?

This issue raises a question of law. Hence, our *de novo* review is not accompanied with a presumption of correctness as to the trial court’s judgment. ***Southern Constructors, Inc. v. Loudon Co. Bd. of Educ.***, 58 S.W.3d 706, 710 (Tenn. 2001).

II.

The complaint to quiet title, filed by the present owners on May 12, 2003, recites that the previous owners failed to pay the 1996 real estate taxes assessed against the property and that this failure resulted in the tax sale that led to the present owners’ acquisition of title. The complaint goes on to state that the present owners’ “tax sale status creates an uninsurable cloud on [their] title,” and that they intend to prove that title to the property was properly divested from the previous owners and vested in them “pursuant to a valid tax sale.” Finally, the complaint seeks the entry of an order vesting unencumbered fee simple title in the present owners.

The previous owners failed to respond to the complaint. The trial court, acting on its own, dismissed the complaint without prejudice.

III.

Tenn. Code Ann. § 67-5-2504(b) (2003) provides, in pertinent part, as follows:

A tax deed of conveyance shall be an assurance of perfect title to the purchaser of such land, and no such conveyance shall be invalidated in any court, except by proof that the land was not liable to sale for taxes, or that the taxes for which the land was sold have been paid before the sale; . . . .

Subsection (d) of Tenn. Code Ann. § 67-5-2504 provides that

[n]o suit shall be commenced in any court of the state to invalidate any tax title to land after three (3) years from the time the land was sold for taxes, except in case of persons under disability, who shall have one (1) year in which to bring suit after such disability is removed.

#### IV.

“[A] tax sale is not complete until it is confirmed by the court.” *Marlowe v. Kingdom Hall of Jehovah’s Witnesses*, 541 S.W.2d 121, 125 (Tenn. 1976). As previously noted, the tax sale in the instant case was confirmed by judgment of the trial court entered April 4, 2002. Thus, Tenn. Code Ann. § 67-5-2504(d) stands in the way of any attempt by the previous owners to bring suit to invalidate under that statute more than three years after April 4, 2002. The present owners argue that the three-year limitation on filing suit “is intended for the benefit of the purchaser so that if he [or she] chooses to wait out the period his [or her] title cannot be attacked based upon an invalid sale.”

In *Harrison v. Henderson*, 54 Tenn. (7 Heisk.) 315, 340 (1872), the Supreme Court stated that “[a] limitation law . . . fixes upon a reasonable time within which a party is allowed to bring suit to recover his rights, and if he *fails* to do so, establishes a legal presumption against him that he has no rights in the premises.” (Emphasis in original) (citation omitted). While the statute of limitations now before us admittedly benefits a purchaser at a tax sale in that it affords the purchaser a defense to an untimely-filed suit to invalidate “a tax title,” the statute also appraises the previous owner of the period of time within which he or she has to bring an action to invalidate the other party’s title. When the General Assembly enacted Tenn. Code Ann. § 67-5-2504(d), it set the public policy of this state, *i.e.*, that one whose property is sold to collect delinquent taxes has three years to file suit to invalidate the new owners’ title. It is not the prerogative of the judicial branch to shorten the limitation period selected by the legislative branch.

The present owners assert that “[i]t has been held that expiration of the three (3) year limitation period does not bar all actions to recover title” and cite *West v. Jackson*, 28 Tenn. App. 102, 186 S.W.2d 915 (1944) and *Collier v. Goessling*, 160 F. 604 (6th Cir. 1908) as supporting authority. However, no specific argument is articulated in association with this general assertion.

In *West*, the plaintiffs filed suit to invalidate the defendants’ tax title, one that they claimed by virtue of a delinquent tax sale. *Id.* at 916. There was no evidence that the plaintiffs were properly notified of the suit for delinquent taxes or of the sale and subsequent related proceedings. *Id.* We held that the tax title was void due to a lack of notice. *Id.* at 916, 918. Quoting *Tennessee Marble & Brick Co. v. Young*, 179 Tenn. 116, 125, 163 S.W.2d 71, 75 (1942), we held that the three-year statute of limitations does not apply to a void decree, noting that

“[a] decree may be assailed because of invalidity at any time. A void decree is in the same plight as though it never existed.”

*West*, 186 S.W.2d at 917.

In *Collier*, the plaintiff sought to remove a tax deed as a cloud on his title to property in his possession and to enjoin execution of a writ of possession issued by a state circuit court on behalf of the defendant who held title by virtue of the tax deed. *Id.* at 605. Tennessee law provided that when the county trustee sold property subject to delinquent taxes he was required to “strike off” to

the state treasurer all such property so sold when the full amount due on the property was not bid at the sale by a private person. *Id.* The county trustee was then required to file a certified list of these “struck off” lands with the circuit court clerk. *Id.* This list would operate to vest title to the lands in the state treasurer, and the circuit court clerk was empowered to sell such lands privately for payment of the delinquent taxes. *Id.* at 605-06. The defendant held the tax deed to the property at issue pursuant to his purchase of the property from the circuit court clerk, a purchase that had occurred over three years prior to the plaintiff’s suit. *Id.* at 606. However, upon proof that the certified list provided to the clerk by the county trustee was defective, the Sixth Circuit held that the clerk was without authority to convey the property to the defendant; accordingly, the court held that the defendant’s tax deed was void. *Id.* at 608. The applicable statute governing a suit to invalidate a tax sale provided, as does Tenn. Code Ann. § 67-5-2504, that the sale could only be invalidated “by proof that the land was not liable to sale for taxes, or that the taxes for which said land was sold have been paid before said sale” and required that such suit be commenced no later than three years from the time the property was sold for taxes. *Id.* at 606. The court determined that “this limitation was not intended to apply to those matters upon which the power of the clerk and the jurisdiction of the court depended.” *Id.* at 609. (Emphasis added).

In each of these cases, the underlying vestiture of title was determined to be void because of jurisdictional defects. Under such circumstances, Tenn. Code Ann. § 67-5-2504 is not implicated because that statute does not address tax sales that are void in nature. We do not find these cases to be supportive of the present owners’ argument that the court should entertain their action to quiet title prior to the three years allowed for invalidating a sale under the statute.

The present owners also cite *Wynn v. Dickey*, 187 Tenn. 1, 6, 212 S.W.2d 671, 673 (1948) for the proposition that a prior owner cannot avail himself of a suit to invalidate a tax sale pursuant to Tenn. Code Ann. § 67-5-2504 where the taxes were delinquent and untendered at the time of the tax sale. In *Wynn*, the plaintiffs filed suit to set aside tax deeds acquired by the defendant as a result of delinquent tax sales. *Id.* at 672. The court held that the plaintiffs’ bills to set aside the sales were “fatally defective since they wholly fail to deny, and indeed admitted, that taxes were delinquent and untendered, at the time the properties involved were sold for delinquent taxes.” *Id.* at 673. By contrast, in the instant case, there is no admission by the previous owners that the taxes for which the property was sold were delinquent at the time of sale. We cannot disregard the possibility that the previous owners may, before the expiration of the three-year period, produce evidence that such taxes were, in fact, paid before the sale.

The present owners also point out that, under Tenn. Code Ann. § 67-5-2504(d), a disabled person is allowed one year after his or her disability is removed to bring suit. They contend that “[a]pplying the theory that the statute bars a quiet title action until the running of this section could bar an action indefinitely under a proper factual scenario.” Our acknowledgment of this possibility does not compel us to adopt the present owners’ argument that the statute should not bar their action to quiet title in this case. We recognize that our decision hampers the present owners in their efforts to insure and market the property in question and that, in the case of a disabled person, an action to quiet title might hypothetically be barred for an indefinite period. However,

[i]t is not within our rights to bend the law to meet hard cases. It is our duty to administer it as written.

***Swift & Co. v. Memphis Cold Storage Warehouse Co.***, 128 Tenn. 82, 102, 158 S.W. 480, 485 (1913).

Finally, the present owners assert the following:

Tenn. Code Ann. § 29-29-101 et seq. requires that Defendants receive notice and opportunity to assert defenses. Tenn. Code Ann. § 29-29-103 allows for appointment of a guardian ad litem to investigate and defend the rights of persons under disability. Resolution of ownership allows the new owner to go forward with improvements and development without risk of loss from unasserted claims.

Tenn. Code Ann. § 29-29-101, *et seq.* addresses the rights of *persons not in being*, e.g., unborn children, in the context of an action to quiet title. Tenn. Code Ann. § 29-29-103 (2000) provides as follows:

If, after notice has been given as provided in § 29-29-102, it shall appear to the court that there are parties defendant who are not in being and who are not represented before the court, the court may of its own motion or on the motion of any party, appoint a suitable person to act as guardian ad litem or next friend of any such party or parties, and if there are or may be any parties defendant who have conflicting interests, the court may appoint different guardians ad litem or next friends to represent them.

Contrary to the assertion of the present owners, we find nothing in this statute that applies to a person under a disability. In any event, we disagree that Tenn. Code Ann. § 29-29-101, *et seq.* is relevant to the matter before us in light of the fact that the evident function of this statutory scheme is to designate the rights of persons not in being when suit is brought to quiet title.

The present owners maintain that their action to quiet title

does not preclude any right of action the prior land owner may have. It simply calls upon him to come forward and make such defenses to his title as he may have if there be any.

We respectfully disagree with this conclusion. It is our determination that forcing the previous owners to present proof that the subject tax sale runs afoul of Tenn. Code Ann. § 67-5-2504 before the expiration of three years does indeed destroy a right given to such owners by that statute.

V.

The judgment of the trial court is affirmed. This case is remanded for collection of costs assessed below. Costs on appeal are taxed to the appellants, Jonathan Inman and wife, Keena Inman.

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CHARLES D. SUSANO, JR., JUDGE